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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DENNIS WAYNE MIZE, SR.,
Plaintiff,
v.
JEFFREY BEARD, et al.,
Defendants.

No. 2:14-cv-1558 MCE CKD P

ORDER

Plaintiff is a California prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. On October 16, 2014, plaintiff’s complaint was dismissed with leave to file an amended complaint. Plaintiff has now filed an amended complaint.

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,

1 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
2 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
3 Cir. 1989); Franklin, 745 F.2d at 1227.

4 In order to avoid dismissal for failure to state a claim a complaint must contain more than
5 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause
6 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,
7 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
8 statements do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Furthermore, a claim
9 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A
10 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
11 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 129 S. Ct.
12 at 1949. When considering whether a complaint states a claim upon which relief can be granted,
13 the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007),
14 and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416
15 U.S. 232, 236 (1974).

16 The allegations in plaintiff’s complaint are not remarkably different from those in his
17 original complaint. Again, the court finds the allegations are so vague and conclusory that
18 plaintiff fails to state a claim upon which relief can be granted. Although the Federal Rules of
19 Civil Procedure adopt a flexible pleading policy, a complaint must give fair notice and state the
20 elements of the claim plainly and succinctly. Jones v. Community Redev. Agency, 733 F.2d 646,
21 649 (9th Cir. 1984). Plaintiff must allege with at least some degree of particularity overt acts
22 which defendants engaged in that support plaintiff’s claim. Id. Plaintiff’s amended complaint
23 must be dismissed. The court will, however, grant plaintiff one final opportunity to amend.

24 If plaintiff chooses to file a second amended complaint, plaintiff must demonstrate how
25 the conditions complained of have resulted in a deprivation of plaintiff’s constitutional rights.
26 See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Plaintiff complains about the medical care he
27 is receiving at Mule Creek State Prison. Denial or delay of medical care for a prisoner’s serious
28 medical needs may constitute a violation of a prisoner’s Eighth Amendment rights. Estelle v.

1 Gamble, 429 U.S. 97, 104-05 (1976). A violation of the Eighth Amendment occurs when a
2 prison official is deliberately indifferent to a prisoner’s serious medical needs. Id.

3 Also, if plaintiff elects to file an amended complaint, plaintiff must explain in specific
4 terms how each named defendant is involved in any alleged violation of his rights. For example,
5 it is not sufficient to say “defendants denied me medication.” Plaintiff must assert specifically
6 who denied him medication, and exactly how denial of the medication in question amounted to
7 deliberate indifference to serious medical needs. There can be no liability under 42 U.S.C. §
8 1983 unless there is some affirmative link or connection between a defendant’s actions and the
9 claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976). Furthermore, vague and conclusory
10 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of
11 Regents, 673 F.2d 266, 268 (9th Cir. 1982). Therefore, plaintiff should avoid naming persons as
12 defendants, like Secretary Beard, who did not make decisions specifically about plaintiff’s
13 medical treatment.

14 Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to
15 make plaintiff’s second amended complaint complete. Local Rule 220 requires that an amended
16 complaint be complete in itself without reference to any prior pleading. This is because, as a
17 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
18 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no
19 longer serves any function in the case. Therefore, in an amended complaint, as in an original
20 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

21 In accordance with the above, IT IS HEREBY ORDERED that:

22 1. Plaintiff’s amended complaint is dismissed.

23 2. Plaintiff is granted thirty days from the date of service of this order to file a second
24 amended complaint that complies with the requirements of this order, the Civil Rights Act, the
25 Federal Rules of Civil Procedure, and the Local Rules of Practice; the second amended complaint
26 must bear the docket number assigned this case and must be labeled “Second Amended

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1 Complaint"; failure to file a second amended complaint in accordance with this order will result
2 in a recommendation that this action be dismissed.

3 Dated: March 10, 2015



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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